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Attorneys for Plaintiff  
7 UNITED STATES OF AMERICA

8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA, )

Case No. 08CR0207-BEN

11 Plaintiff, )

12 v. )

**STIPULATION OF FACT AND JOINT  
MOTION FOR RELEASE OF  
MATERIAL WITNESS AND ORDER  
THEREON**

13 FRANCISCO HERNANDEZ-GUTIERREZ, )

14 Defendant. )  
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16 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES  
17 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Christina  
18 M. McCall, Assistant United States Attorney, and defendant FRANCISCO  
19 HERNANDEZ-GUTIERREZ, by and through and with the advice and consent of defense counsel,  
20 Frank Murphy, Esq., that:

21 1. Defendant agrees to execute this stipulation on or before the change-of-plea hearing  
22 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,  
23 intelligently and voluntarily entered into it. Defendant agrees further to plead guilty to the single  
24 count of the Indictment charging defendant with a non-mandatory minimum count of Transporting  
25 Illegal Aliens, in violation of 8 U.S.C. § 1324(a)(1)(A)(ii) and 18 U.S.C. § 2.

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1           2. Defendant acknowledges receipt of a plea agreement in this case and agrees to  
2 provide the signed, original plea agreement to the Government prior to the disposition date set by  
3 the Court.

4           3. The material witness, Marcos Alonso-Dominguez, in this case:

5           a. Is an alien with no lawful right to enter or remain in the United States;

6           b. Entered or attempted to enter the United States illegally on or about January  
7 8, 2008;

8           c. Was guided to the border fence by a smuggler and instructed to jump over the  
9 border fence and run to a vehicle that took him to defendant's tractor-trailer, where defendant and  
10 the material witness had a brief conversation about illegally transporting the material witness to Los  
11 Angeles;

12           d. Was paying, or having others pay on his behalf, \$2,000 to defendant or others  
13 to be brought into the United States illegally and/or transported illegally to their destination therein;

14           e. Identified defendant from a photo lineup as the driver of the vehicle  
15 transporting him illegally to Los Angeles; and,

16           f. May be released and remanded immediately to the Department of Homeland  
17 Security for return to their country of origin.

18           4. After the material witness is ordered released by the Court pursuant to this stipulation  
19 and joint motion, if defendant does not plead guilty to the charge set forth above, for any reason, or  
20 thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,  
21 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

22           a. The stipulated facts set forth above shall be admitted as substantive evidence;

23           b. The United States may elicit hearsay testimony from arresting agents  
24 regarding any statements made by the material witness(es) provided in discovery, and such testimony  
25 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest  
26 of (an) unavailable witness(es); and,

27           c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),

1 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted  
 2 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant  
 3 waives the right to confront and cross-examine the material witness(es) in this case.

4 5. By signing this stipulation and joint motion, defendant certifies that defendant has  
 5 read it (or that it has been read to defendant in defendant's native language). Defendant certifies  
 6 further that defendant has discussed the terms of this stipulation and joint motion with defense  
 7 counsel and fully understands its meaning and effect.


8 Based on the foregoing, the parties jointly move the stipulation into evidence and for the  
 9 immediate release and remand of the above-named material witness(es) to the Department of  
 10 Homeland Security for return to their country of origin.

11 It is STIPULATED AND AGREED this date.

12 Respectfully submitted,

13 KAREN P. HEWITT  
 14 United States Attorney

15 Dated: 3-12-08.

  
 16 CHRISTINA M. McCALL  
 Assistant United States Attorney

17 Dated: 3/11/08.

  
 18 FRANK MURPHY  
 Defense Counsel for Francisco Hernandez-Gutierrez

19 Dated: 3/11/08.

  
 20 FRANCISCO HERNANDEZ-GUTIERREZ  
 21 Defendant

**ORDER**

Upon joint application and motion of the parties, and for good cause shown,

**THE STIPULATION** is admitted into evidence, and,

**IT IS ORDERED** that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

**SO ORDERED.**

Dated: 3/12/08

  
United States Magistrate Judge